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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

No. 77-1119

WILLIAM HERBERT ORR,

*Appellant,*

*v.*

LILLIAN M. ORR,

*Appellee.*

APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

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(i)

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APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

This appeal is taken from the final order of the Supreme Court of Alabama entered on November 20, 1977, quashing Appellant's petition for Writ of Certiorari to the Court of Civil Appeals of Alabama. Appellant submits this statement in support of the jurisdiction of the Supreme Court of the United States to hear this appeal and to show that a substantial federal question is presented in this appeal.

### OPINIONS BELOW

The opinion of the Supreme Court of Alabama is reported as *Orr v. Orr*, — Ala. —, 351 So.2d 906 (1977). The opinion of the Court of Civil Appeals of Alabama is reported as *Orr v. Orr*, — Ala. App. —, 351 So.2d 904 (1977). The Circuit Court of Lee County, Alabama, did not issue an opinion. A copy of each opinion is attached as Appendix A, and a copy of the judgment of the Circuit Court of Lee County, Alabama, is attached as a portion of Appendix B.

### JURISDICTION

This appeal is taken by Appellant in an effort to have certain Alabama statutes which authorize a court to award alimony to women but not to men declared unconstitutional. Appellant is appealing to this Court from an order of the Supreme Court of Alabama entered on November 10, 1977, quashing its Writ of Certiorari to the Court of Civil Appeals of Alabama as improvidently granted and denying Appellant's petition for the writ. (Appendix B., p. 14a). By this order, the Supreme Court of Alabama made final the judgment of the Court of Civil Appeals (Appendix B, p. 15a) which upheld the validity of the alimony statutes in the face of Appellant's constitutional challenge. Appellant did not file a motion for rehearing in the Supreme Court of Alabama because such a motion will not be received by that Court when the subject of the motion is an order denying certiorari, Alabama Rule of Appellate Procedure 39(j).

On January 30, 1977, Counsel for Appellant filed a "Notice of Appeal to the Supreme Court of the United States" in the Supreme Court of Alabama and in the Court of Civil Appeals of Alabama (Appendix C), mailed the same to Counsel for Appellee, and mailed

the same to this Court along with his "Appearance and Notification Form".

This Court's jurisdiction is invoked under 28 U.S.C. §1257(2). Cases which sustain this jurisdiction include: *Stanton v. Stanton*, 421 U. S. 7 (1975); *Stanley v. Illinois*, 405 U. S. 645 (1972); *Reed v. Reed*, 404 U. S. 71 (1971); and *Levy v. Louisiana*, 391 U. S. 68 (1968).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Amendment XIV, §1, providing in pertinent part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Alabama Code 1975 §§30-2-51 through 53.<sup>1</sup>

#### §30-2-51

"If the wife has no separate estate or if it be insufficient for her maintenance, the judge, upon granting a divorce, at his discretion, may order to the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family."

#### §30-2-52

"If the divorce is in favor of the wife for the misconduct of the husband, the judge trying the case shall have the right to make an allowance to the

<sup>1</sup> Formerly *Code of Alabama*, Title 34, §§31-33 (1940). Upon recodification these sections underwent certain minor, technical changes. These changes have no bearing on the issues presented by this appeal and the order of the Supreme Court of Alabama was entered after recodification.

wife out of the husband's estate, or not make her an allowance as the circumstances of the case may justify, and if an allowance is made, it must be as liberal as the estate of the husband will permit, regard being had to the condition of his family and to all the circumstances of the case."

§30-2-53

"If the divorce is in favor of the husband for the misconduct of the wife and if the judge in his discretion deems the wife entitled to an allowance, the allowance must be regulated by the ability of the husband and the nature of the misconduct of the wife."

#### QUESTION PRESENTED

The ultimate question presented is whether Alabama's alimony statutes are unconstitutional. By the statutes' terms, only a man can be required to pay alimony, and this distinction between men and women gives rise to Appellant's question. Specifically: Do these statutes violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by virtue of their absolute reliance on a gender-based classification?

#### STATEMENT OF THE CASE INCLUDING THE RAISING OF AND RULING UPON THE FEDERAL QUESTION

This proceeding began in the Circuit Court of Lee County, Alabama, as a contempt action against Appellant based on his failure to pay alimony as required under the terms of a divorce decree entered by that same court on July 26, 1974. In the contempt proceedings, Appellant properly raised the constitutionality of Alabama's alimony statutes by a motion of August 19, 1976, (Appendix D, p. 23a) requesting that the alimony statutes be declared

to be in violation of the Equal Protection Clause and that the alimony provision of his divorce decree be declared null and void. On that same day, the Circuit Court of Lee County, Alabama, denied Appellant's motion (Appendix D, p. 22a) and entered its judgment enforcing his alimony obligation (Appendix B, p. 16a).

Appellant appealed this order and judgment to the Court of Civil Appeals of Alabama, which noted that Appellant had "by appropriate motion filed with the trial court, challenged the constitutionality of . . . Alabama's alimony statutes," and stated that it considered the "sole issue" before it to be "whether Alabama's alimony statutes are unconstitutional." —Ala. App. at —, 351 So.2d at 905. (Appendix A, pp. 10a, 11a). In her brief, Appellee also agreed "that the issue before this Court [of Civil Appeals] is whether the Alabama alimony laws are unconstitutional because of the gender based classification made in the statutes." (Brief for Appellee in the Court of Civil Appeals at 1, Appendix D, p. 25a). The Court of Civil Appeals affirmed the Circuit Court's decision and upheld the constitutionality of the challenged statutes in its judgment of March 16, 1977, (Appendix B, p. 15a) and Appellant petitioned the Supreme Court of Alabama for Writ of Certiorari to the Court of Civil Appeals to review that judgment. This petition was originally granted, but in its order (Appendix B, p. 14a) and opinion (Appendix A, p. 1a) of November 10, 1977, the Supreme Court of Alabama quashed its writ as improvidently granted.

### THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

This Court has never ruled upon the validity of a state statute which authorizes alimony payments to women only. The issue was presented in *Murphy v. Murphy*, 232 Ga. 352, 206 S.E.2d 458 (1974), cert. denied 421 U.S. 929 (1975), where a divorced husband challenged the constitutionality of Georgia's alimony statutes, but the presentment to this Court was presumably in a confused posture since review was sought through Writ of Certiorari rather than by an appeal of the Georgia Supreme Court's decision upholding the validity of the statutes in the face of a constitutional challenge. *Murphy* aside, this Court has heard and resolved appeals of cases involving constitutional questions relating to a state's intrusion into the family setting when that intrusion results in the allocation of the paternal burdens along sexually discriminatory lines. In *Stanley v. Illinois*, 405 U. S. 645 (1972), this Court held that the father of an illegitimate child was entitled to the same presumptions in a custody proceeding that would normally be given to a similarly situated mother. Although the majority of the Court treated the issue involved as one of due process, four Justices held that Illinois violated the Equal Protection Clause when it made assumptions regarding paternal fitness based on gender. Similarly, this Court held in *Stanton v. Stanton*, 421 U. S. 7 (1975), that a state can not allocate paternal and marital responsibilities differently with respect to children of different gender. In that case a divorced father successfully argued that Utah could not compel him to pay support with respect to his son until his son was twenty-one years old, and with respect to his daughter only until she was eighteen years old. Other gender-based discrimination cases concerning a family or marital setting heard by this Court on appeal

from a state court decision upholding a state statute in the face of an equal protection challenge include *Reed v. Reed*, 404 U. S. 71 (1971) and *Kahn v. Shevin*, 416 U. S. 351 (1974).

Though not concerned with family or marital responsibilities, *Craig v. Boren*, 97 S.Ct. 451 (1976) provides a good contrast to Appellant's case. In *Craig* this Court struck down an Oklahoma statute which prohibited men from buying beer with 3.2% alcohol content until they reach age twenty-one. Under another statute women were allowed to buy 3.2% beer at age eighteen, and this Court held that the different age requirements unjustifiably discriminated against men even though the state had a legitimate interest in regulating who could buy alcoholic beverages. Further, a plurality of the Court premised its decision with the proposition that modern case law prohibited a state from relying on casual gender categorizations and that it was "necessary that the legislatures choose either to realign their substantive laws in a gender-neutral fashion, or to adopt procedures for identifying those instances where sex-centered generalizations actually comported to fact." 97 S.Ct. at 458. Appellant submits that the question posed in this appeal is easily as substantial as that in *Craig*.

A review of Alabama cases shows the nature and extent of the discrimination of Alabama's alimony statutes. The Supreme Court of Alabama treats alimony as a purely statutory right. In *Sims v. Sims*, 253 Ala. 307, 45 So.2d 25 (1950), that court reversed a lower court's modification of an alimony award and discussed the nature of alimony in its opinion. "The duty to pay alimony is because of the duty of a man to support his wife. [citation omitted] A divorce without alimony cuts off the right. A divorce decree with provisions for ali-

mony creates a duty as there provided." 253 Ala. at 311, 45 So.2d at 29. In a situation similar to that of *Sims*, the same court was even more explicit: "the jurisdiction and authority . . . to make allowances to the wife 'out of the estate of the husband,' temporary and permanent, is a statutory and limited jurisdiction." *Gabbert v. Gabbert*, 217 Ala. 599, 601, 117 So. 214, 215, 16 (1928). Further, the Supreme Court of Alabama has also held that alimony can never be awarded in favor of a man. *Davis v. Davis*, 279 Ala. 643, 189 So.2d 158 (1966) was a review of a divorce decree. The court issuing the divorce had awarded the husband custody of the parties' child and use of their jointly owned home as a home for the child. The Supreme Court of Alabama characterized the award of the home to the husband as a contribution by the wife to his support and maintenance and reversed the award saying: "[i]n the absence of a statute so providing there is no authority in this state for awarding alimony against the wife in favor of the husband. [citations omitted] There is no statute in this state authorizing such an award. The statutory scheme is to provide alimony only in favor of the wife." 279 Ala. at 644, 189 So.2d at 160.

Considering Alabama's alimony statutes as essentially statutory remedies granted only to women places Appellant in much the same situation as the appellants in *Levy v. Louisiana*, 391 U.S. 68 (1968). The appellants in *Levy* were illegitimate children who had sued in Louisiana state court to recover for the wrongful death of their mother. The trial court dismissed their suit and the Supreme Court of Louisiana affirmed this dismissal construing "child" as used in the Louisiana Wrongful Death Act to mean legitimate or acknowledged child. This Court held that, as so construed, the Louisiana act was in violation of the Equal Protection Clause because similarly

situated children were not given similar causes of action under the statute. In a like manner, similarly situated parties in a divorce proceeding are never given similar treatment in Alabama since a woman will always have a right of action for an award of alimony but a man never will.

Faced with the fact the challenged statutes do not accord men the same rights as similarly situated women, the issue of this appeal is whether the discriminatory treatment is justified by important governmental objectives and is substantially related to those objectives, *Craig*, 97 S.Ct. at 457, or even whether it rests "upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920).

Historically, the Courts of Alabama have explained the discriminatory effect of the challenged statutes by reference to the common law. "The basis for these statutes is the common-law obligation of a husband to support his wife." *Davis*, 279 Ala. at 644, 189 So.2d at 160. "The duty to pay alimony is because of the duty of a man to support his wife." *Sims*, 253 Ala. at 311, 45 So.2d at 29. Alabama can not rely on the fact that the common law placed a different burden on men and women to justify the discrimination of its statutes, however. This type of structuring the law to reflect the traditional gender role models is precisely what the Equal Protection Clause has come to prohibit. Thus, in *Craig* this Court explained its decision in *Stanton*, 421 U. S. 7, as holding "that *Reed* [404 U. S. 71] required invalidation of the Utah differential age-of-maturity statute, notwithstanding the statute's coincidence with a

furtherance of the State's purpose of fostering 'old notions' or role-typing and preparing boys for their expected performance in the economic and political worlds." 97 S.Ct. at 457. To argue that discrimination may be justified by historical and common law inequities completely ignores the role of our Constitution in correcting these inequities and securing personal rights not guaranteed by the common law. Similarly, the obviously substantial relation that the discrimination bears to the statutes' objective does not save the statutes, because that objective is neither fair nor proper but rather is to insure that similarly circumstanced persons will *not* be treated alike.

The Court of Civil Appeals of Alabama apparently realized the absurdity of a historical justification for Alabama's discriminatory alimony laws, and its opinion in this case did not mention any of the explanations of the law which are quoted above. Rather the Court of Civil Appeals merely quoted at length the discussion of *Kahn*, 416 U. S. 351, in *Murphy*, 232 Ga. 352, 206 S.E.2d 458, and concluded: "[a]s the Georgia Supreme Court stated, the reasons noted above [in the *Kahn* opinion] are equally applicable in the instance of the wife involved in seeking alimony pursuant to a divorce. It is the wife of a broken marriage who needs financial assistance for whom the alimony statutes of Alabama were designed." — Ala. App. at —, 351 So.2d at 905. (Appendix A, p. 12a). Appellant contends that these nineteenth century statutes cannot be saved by such a blithe appropriation of a "benign" purpose and refers this Court to its statement in *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), in which the Court equalized Social Security benefits paid to male and female surviving spouses with children: "but the mere recitation of a benign, compensatory purpose is not an automatic

shield which protects against any inquiry into the actual purposes of the statutory scheme." 420 U.S. at 648.

In any event, the Court of Civil Appeals' reliance on *Kahn* to justify the discriminatory alimony statutes was misplaced. In *Kahn*, this Court heard an appeal from the Supreme Court of Florida in which a widower claimed that Florida's tax scheme was in violation of the Equal Protection Clause. The statute in question gave widows an annual five hundred dollar property tax exemption but did not apply to benefit widowers. Appellant *Kahn* was a widower who applied for this exemption and, upon its denial, took his case to court. This Court upheld the Florida statute after noting the wide latitude given a state in formulating its tax policy and considering the statute in question to be "reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden." 416 U. S. at 355.

The statute in *Kahn* merely granted a gratuitous benefit to widows but not to widowers, but the statutes in question in this appeal intrude into the marital relationship and arbitrarily allocate the benefits and burdens incumbent upon a divorce according to the gender of the parties. If Alabama is truly interested in aiding "the wife of a broken marriage who need financial assistance," then *Kahn* would presumably justify a tax credit given to divorced women, but that case does not justify the state's discriminatory alimony statutes which aid the wife of a broken marriage at the expense of her often innocent husband. If " 'archaic and overbroad' generalizations . . . could not justify the use of gender line in determining eligibility for certain government entitlements," *Craig*, 97 S. Ct. at 457, then certainly they can not justify Alabama's use of gender line in allocating

family responsibilities. Further, the over-inclusiveness of the classification of "widows" in the Florida statute saved the state the cost of maintaining administrative proceedings to determine which widows were actually needy. Alabama, however, realizes no administrative economy by denying alimony benefits to men. Since a hearing is presently held to determine if alimony is due to a woman and, if so, what amount is due her, allowing her spouse to state his claim to alimony would not overburden Alabama's administration of divorce.

The confusion of the Court of Civil Appeals is further exhibited by its reference to *Whitt v. Vauthier*, 316 So.2d 202 (La. App. 4th Cir. 1975), *Writ refused* October 17, 1975, and its statement that *Whitt* is in accord with its decision. *Whitt* was a challenge to a Louisiana statute which authorized alimony for women only. While the Louisiana court admittedly relied on *Kahn* to uphold the statute, it also pointed out that men were entitled to an award of alimony under the applicable principles of civilian law. "Not only do we reject the assumption that divorced husbands do not have a similar remedy, but we find no basis to declare Art. 160 unconstitutional." 316 So.2d 205, 206. Recognizing that the Louisiana alimony statute could have been saved by the fact that an alternative remedy was open to men, *Whitt* obviously does not support the constitutionality of a similar statute in a jurisdiction which has specifically refused to award men a similar common law cause of action.

Throughout their proceedings, the courts of Alabama considered the sole issue of this case to be the constitutionality of Alabama's alimony statutes and doggedly upheld these statutes. Consequently, this Court is presented with an issue of national interest and public concern in the clearest terms possible. That the constitu-

tionality of these statutes is an issue of national concern cannot be disputed. By last count, over one-fifth of our states have alimony statutes which operate to discriminate against men, *Thaler v. Thaler*, 89 Misc. 2d 315, \_\_\_, 391 N. Y. S. 2d 331, 338 (Sup. Ct. 1977), so the issue is neither foreclosed by a national consensus nor limited to the particular circumstances of this case. Rather, the number of states with discriminatory alimony statutes and the recent challenges of these statutes indicate that the constitutionality of these statutes is a "live" issue and in need of resolution by this Court. Statements have been made that the Court should avoid dealing with issues such as this until after the states have finally acted upon the Equal Rights Amendment, but this appeal should not be dismissed in an effort to postpone the resolution of the question it presents. Apart from considerations of whether the Court can legitimately avoid hearing an appeal from a state court which properly presents a substantial federal question, Appellant's equal protection claim and the principles upon which it is founded are distinct from the success or failure of the Amendment's proponents. Further, the present confusion over the Amendment's ratification and the conflicting appraisals of whether the Amendment is actually necessary to secure equal rights between men and women compel this Court to hear and resolve this case as a squarely presented opportunity to clarify the state of the law as it exists today. Finally, Appellant's present alimony obligation in excess of fifteen hundred dollars per month lends an immediate substantiality to this case, especially when compared to those cases where appellants claimed a five hundred dollar per year tax exemption, *Kahn*, 416 U. S. 351, or a right to indiscriminately buy and sell 3.2% beer, *Craig*, 97 S. Ct. 451.

**CONCLUSION**

The question presented in this appeal is substantial and of public importance and therefore requires plenary consideration, with brief on the merits and oral arguments, for its resolution.

Respectfully submitted,

JOHN L. CAPELL, III

CLINTON B. SMITH

**APPENDIX**

APPENDIX A

THE STATE OF ALABAMA  
JUDICIAL DEPARTMENT  
THE SUPREME COURT OF ALABAMA  
OCTOBER TERM, 1977-78

S.C. 2536 Ex parte: William Herbert Orr  
PETITION FOR WRIT OF CERTIORARI TO  
THE COURT OF CIVIL APPEALS  
(In re: William Herbert Orr  
v.  
Lillian M. Orr)

PER CURIAM.

PETITION FOR WRIT OF CERTIORARI QUASHED  
AS IMPROVIDENTLY GRANTED.

Maddox, Faulkner, Shores, Embry, and Beatty, JJ.,  
concur

Almon, J., concurs specially, with whom Bloodworth,  
J., joins.

Jones, J., dissents.

Torbert, C. J., recuses.

ALMON, JUSTICE (concurring specially):

I concur in affirming the Court of Civil Appeals and  
continue to adhere to the views expressed in my dissent  
in *Peddy v. Montgomery*, 345 So.2d 631, 637 (Ala.,  
1977).

I dissented from the Court's opinion in *Peddy* because  
I felt it established a precedent which would lead to  
striking down every state statute making a gender related  
classification. At the forefront of my fears were challeng-  
es to the laws concerning marital rights; such as, home-

stead, dower, and alimony. These laws are designed to foster and preserve the family unit, a constitutionally permissible area for legislation.

The breadth of the pen with which the Court wrote *Peddy* has now come back to confront us. It appears that when viewed in isolation, statutes which restrict the rights of women are unconstitutional. On the other hand, statutes which grant to women rights which men do not possess are not unconstitutional.

Bloodworth, J., concurs.

JONES, JUSTICE (Dissenting):

I respectfully dissent.

This case, before the Court upon writ of certiorari, concerns the constitutionality of Alabama's alimony statutes. See Tit. 34, §§ 31-33, Code. William Herbert Orr, Petitioner, contends that these statutes are unconstitutional in that they violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution because a wife may obtain alimony, whereas a husband, under similar circumstances, may not. The Petitioner also asserts that these statutes violate the Due Process Clause of the Fifth Amendment. Because this argument is so interwoven into the fabric of the equal protection contentions, the two will be dealt with together. Based upon *Murphy v. Murphy*, 232 Ga. 352, 206 S.E.2d 458 (1974), cert. den. 421 U.S. 929 (1975), the trial Court and Court of Civil Appeals held our statute constitutionally acceptable. I would reverse.

The facts of this case are not in dispute. On February 27, 1974, Mr. Orr and Lillian M. Orr, Respondent, signed a written stipulation wherein Mr. Orr agreed to pay Mrs. Orr the sum of \$1,240 per month for her

support and maintenance. On that same date, a final decree of divorce, incorporating the above agreement, was granted.

On July 28, 1976, Mrs. Orr alleged that Mr. Orr was \$2,848 in arrears in his alimony payments. Mr. Orr filed a motion alleging that Mrs. Orr's petition was based upon an illegal decree in that it relied upon Tit. 34, §§ 31-33, Code, and that these sections are unconstitutional. The trial Court denied the motion and granted judgment against Mr. Orr for the arrearages, attorney's fees, and court costs.

Here, we have a needy wife who qualifies for alimony and a husband who has the property and earnings from which alimony can be paid. The veracity of this statement has not been contested. The husband, however, complains that the statutes are unconstitutional because they place an obligation upon male spouses which is not reciprocally impressed upon female spouses. The husband who must pay this alimony has sufficient standing to raise the constitutional questions involved. See *Stern v. Stern*, 165 Conn. 190, 332 A.2d 78 (1973).

Tit. 34, § 31, Code of Alabama, provides:

If the wife has no separate estate, or if it be insufficient for her maintenance, the judge, upon granting a divorce at his discretion may decree to *the wife* an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family. (Emphasis added.)

This Court has held that the statutory scheme is to provide alimony only in favor of the wife. *Davis v. Davis*, 278 Ala. 643, 189 So.2d 158 (1966). It is this inequality of treatment which the Petitioner alleges is unconstitutional.

Two standards are utilized to determine whether a statute will withstand examination under the Equal Protection Clause of the United States Constitution. The strict scrutiny standard is a test reserved for cases involving laws which operate to the disadvantage of suspect classifications or that interfere with the exercise of fundamental rights and liberties explicitly or implicitly protected by the Constitution. *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973). Under the second, and traditional, equal protection analysis, a legislative classification must be sustained unless it is patently arbitrary and bears no reasonable, rational relationship to a proper governmental interest. *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Jefferson v. Hackney*, 406 U.S. 535 (1972); and *Richardson v. Belcher*, 404 U.S. 78 (1971).

"General equality" is one of the fundamental rights guaranteed each citizen. *Peddy v. Montgomery*, 345 So.2d 631 (Ala. 1977); and *In re Dorsey*, 7 Port. 293 (Ala. 1838). This, however, does not mean that all types of equal protection classifications are to be examined under the strict scrutiny test. Likewise, it does not mean that natural, rational classifications must be treated identically. Instead, they must be treated with "general equality."

Sex, itself, has been held to be a "suspect" classification by only a plurality of the Supreme Court. *Frontiero*, supra. As a plurality decision, it is enlightening, but not controlling. *Husband M v. Wife M*, 321 A.2d 115 (Del. (1974)). Moreover, as pointed out by the dissent in *Frontiero*, it is inappropriate to hold sex suspect while the Equal Rights Amendment, which would render the decision moot, is still pending. *Frontiero*, at 691 (Powell, J., concurring). I see no reason to hold sex suspect in

this case because the discrimination evident upon the fact of the statutes fails even under the lesser "rational relationship" test.

Separating persons into various classifications does not, per se, violate the Equal Protection Clause. It is only invidious discrimination which offends the Constitution. *Ferguson v. Skrupa*, 372 U.S. 726 (1963); and *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955).

"[T]he Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. [Citations omitted.] . . . The Equal Protection of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)." *Reed v. Reed*, 404 U.S. 71, 75 (1971).

When the above-stated formula is applied to the classification contained in our alimony statutes, in my opinion, these statutes must be deemed unconstitutional.

The initial inquiry concerns whether these statutes are "arbitrary." The basis of our alimony statutes lies in the common law obligation of a husband to support his wife. *Sims v. Sims*, 253 Ala. 307, 45 So.2d 25 (1950); 27A C.J.S., *Divorce*, § 228; and 15 A.L.R.2d 1246 (1951). While this discrimination may have some historical legal justification, the advent of the married woman's property acts dissolve any present justification. The wife is no longer the chattel of her spouse. She is a coequal

partner, with equal duties, rights and obligations. Therefore, any discrimination as to who may receive alimony, merely because of sex, in my opinion, must be viewed as arbitrary.

Even should we hold that the classification by sex is not arbitrary, it must bear a rational relation to some legitimate governmental purpose. Rationality, as used here, however, does not mean that some vague, sentimental, paternalistic, or chivalric reason for the rule exists; it means that there is a truly rational relationship between the means used and the purpose sought to be served. See *Thaler v. Thaler*, 391 N.Y.S.2d 331 (1977). Because, as stated, the basis of the statute rests upon the assumption that wives may depend upon their husbands for support, but husbands never so depend upon their wives, the statute must fail because such a distinction has no rational basis in reality.

Mrs. Orr asks this Court to follow the example of the Georgia Supreme Court in *Murphy v. Murphy*, supra. In that case, the Georgia alimony statute (similar to our own in that only women can receive alimony) was held constitutional. To a large extent, the case was based upon the Supreme Court case of *Kahn v. Shevin*, 416 U.S. 351 (1974). While dealing with a tax exemption for widows only, *Kahn* held that a rational relation to a legitimate interest existed because of the undisputed financial difficulties confronting the lone woman in today's society.

I cannot accept the reasoning of the Georgia Court in *Murphy* and *Shepherd v. Shepherd*, 233 Ga. 228, 210 S.E.2d 731 (1974) (reaffirming *Murphy*). The *Kahn* decision was based upon a state taxing statute. It is well recognized that such statutes are given great constitutional leeway. See *Kahn*, at 355; *Lehnhausen v. Lake*

*Shore Auto Parts Co.*, 410 U.S. 356 (1973); and *Ginsburg, Gender and the Constitution*, 44 Cincinnati L.Rev. 1, 13 (1975). Furthermore, the reasoning of Justice Douglas is circuitous in that, given the historic economic inequality between the sexes which he cites, a holding of this type merely perpetuates these practices because of its "protective" posture. Moreover, *Kahn* was decided prior to *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), which evinces a shift in the Court's approach to sex-discrimination cases.

In *Weinberger*, the Supreme Court held that it was unconstitutional to allow a widow certain social security benefits not granted a widower. While recognizing that men are more likely than women to be the primary family "breadwinner," the Court found no rational basis for the statutory distinction between men and women. 420 U.S., at 645. Numerical probabilities evince no rational reason for the absolute exclusion of male spouses from the statute. Especially is this true where, as in the case before us, the trial Court has discretion as to whether to grant alimony at all. *Thaler v. Thaler*, at 336.

Even assuming arguendo this Court found the Alabama alimony statutes to be nonarbitrary and to have a rational relationship to the object of the legislation, I would hold the statutes unconstitutional because the object of the legislation is, itself, improper. See *Darrin v. Gould*, 540 P.2d 882 (Wash. 1975). Regardless of the presence of a rational relation, the statute must have some legitimate, constitutional interest as its objective.

The objective of the legislature, in passing these statutes, was to protect the lone female from the uncompromising realities of the business world. The presumed justification for this objective is that in the great bulk of divorces it is the woman who is economically disadvan-

taged. This, however, does not lead to a permissible conclusion that males may be denied alimony in situations where females are granted it. Given the legal inhibition against sexual discrimination, the fact that statistically a wife is much more likely to be an alimony recipient cannot mean, as a matter of law, that a husband should be excluded altogether from access to alimony.

"There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage." *Frontiero*, at 684.

Such "protective," paternalistic legislation as we have before us should not be allowed continued effectiveness. Philosophically, a benevolent grant to women of legal rights unreasonably denied to men may help women immediately affected. This type statute, however, has the continuing effect of implicit condescension and perpetuates the misguided conception that women are not legally equal to men. *Thaler*, at 333. See *Peddy v. Montgomery*, supra; and *Ginsburg*, at 3, 6. Moreover, in *Weinberger*, the Supreme Court indicated it would no longer "accept at face value, as an automatic shield for discrimination, recitation of woman-protective purposes for laws [which effectively] associate women with the hearth and men with the wide world outside the home." *Ginsburg*, at 41. The discrimination explicit in Tit. 34, §§ 31-33, Code, should not be tolerated. The right of support depends not upon sex, but upon need.

Several Courts have read their alimony statutes so as to include males. See *Whitt v. Vauthier*, 316 So.2d 202 (La.App. 1975); and *Thaler*, supra. I cannot accept this reasoning, however. This Court has previously deter-

mined that our statute provides no alimony for male spouses. *Davis v. Davis*, supra. Furthermore, because there was no alimony at common law, our statute must be strictly construed. The power to award alimony is jealously limited to statutory authority. *Gabbert v. Gabbert*, 217 Ala. 599, 117 So. 214 (1928); and 27A C.J.S., *Divorce*, § 203. For this reason, I would hold the alimony statutes unconstitutional but I would not rewrite them so as to include the male spouse. We must look to the legislature to pass a more appropriate statute.

Moreover, as in *Peddy*, supra, "we are not called upon to decide whether all legislation which contains a so-called 'gender-based classification' violates the constitution, either of this [state or of the United States]." 345 So.2d 635.] (Sic).

I conclude with one additional observation: Nothing I have said in this dissenting opinion should be construed as an accusation of inconsistency on the part of the majority in the instant case with the holding of the majority in *Peddy*. Indeed, I believe even a casual reading of this dissent will disclose that I have cited *Peddy* for an incidental point merely, and not as precedent for my views. I acknowledge that *Peddy's* rationale is not sex based; that the statute there declared unconstitutional was obligatory—declaring the conveyance void for failure of the husband to join in its execution; and that the statute here under attack leaves the grant of alimony discretionary with the trial court upon its finding of need on the part of the wife, ability to pay on the part of the husband, etc. While this difference does not require, in my opinion, different results, neither does it compel reversal in this case. I say this simply to make clear that my views herein expressed represent an exten-

sion of *Peddy's* rationale; and, therefore, I do not assert, as do my fellow Justices Bloodworth and Almon, inconsistency on the part of the majority.

For the reasons stated above, I would grant the writ and hold that the Court of Civil Appeals is due to be reversed.

[I, J.O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court. Witness my hand this 10 day of Nov. 1977.

/s/ J. O. Sentell

Clerk, Supreme Court of Alabama]

THE STATE OF ALABAMA  
JUDICIAL DEPARTMENT  
THE COURT OF CIVIL APPEALS  
OCTOBER TERM, 1976-77

Civ. 1006

William Herbert Orr

v.

Lillian M. Orr

Appeal from Lee Circuit Court

HOLMES, JUDGE

The husband, by appropriate motion filed with the trial court, challenged the constitutionality of Tit. 34,

§§ 31-33, Code of Alabama, Alabama's alimony statutes. The trial court denied the husband's motion.

The sole issue before this court is whether Alabama's alimony statutes are unconstitutional. We find they are not unconstitutional and affirm.

The husband, through able counsel, contends that Alabama's alimony statutes are unconstitutional in that they violate the 14th Amendment to the U.S. Constitution. The husband argues that the appropriate statutes provide for an award of alimony to females without providing for a corresponding award to males and, therefore, males are denied the right to equal protection under the law.

The same issue before this court was argued before the Supreme Court of Georgia in *Murphy v. Murphy*, 232 Ga. 352, 206 S.E.2d 458 (1974), *cert. denied*, 421 U.S. 929 (1975). The Georgia Supreme Court discussed the same cases and rationale raised by the husband on this appeal. After careful study and consideration, we are of the opinion that we cannot improve on the language or reasoning of the Georgia court. We therefore adopt the following language found in the Georgia case as our own:

"In *Kahn v. Shevin*, — U.S. ——. 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974), the United States Supreme Court approved the constitutionality of a Florida statute which grants widows an annual property tax exemption of \$500 but offers no analogous benefit for widowers . . . . [W]e believe the ratio decidendi of *Kahn* is dispositive of the issues presented here. See also *Dill v. Dill*, 231 Ga. 231, 206 S.E.2d 6; and, *Husband M. v. Wife M.*, 321 A.2d 115, decided by the Supreme Court of Delaware, April 18, 1974.

"The United States Supreme Court determined the Florida statute involved in the Kahn case, providing different treatment of widows and widowers 'rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation." *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, [30 L.Ed.2d 231] quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989' *Id.*, p. 1737, of 94 S.Ct. The court there went on to say: 'This is not a case like *Frontiero v. Richardson*, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583, where the Government denied its female employees both substantive and procedural benefits granted males "solely for administrative convenience" . . . We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden.'

"The court also observed in its opinion that the financial difficulties confronting the lone woman exceed those facing the man and this disparity of earnings is likely to be exacerbated for the widow. 'While the widower can usually continue in the occupation which preceded his spouse's death, in many cases the widow will find herself suddenly forced into a job market with which she is unfamiliar, and in which, because of her former economic dependency, she will have fewer skills to offer.' *Id.*, p. 1737, of 94 S.Ct." (206 S.E. 2d at 459)

As the Georgia Supreme Court stated, the reasons noted above are equally applicable in the instance of a wife involved in seeking alimony pursuant to a divorce. It is the wife of a broken marriage who needs financial assistance for whom the alimony statutes of Alabama were designed. Again quoting from *Murphy v. Murphy*, *supra*:

"As noted in footnote 10 of the majority opinion of the court in *Kahn*, ' "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 [83 S.Ct. 1028, 1031, 10 L.Ed.2d 93].' " (206 S.E.2d at 459, 460)

In accord is *Whitt v. Vauthier*, La.App., 316 So.2d 202 (1975).

The trial court is due to be and is affirmed.

**AFFIRMED.**

Wright, P. J., and Bradley, J., concur.

I, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 16th day of Mar., 1977.

/s/ John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

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APPENDIX B  
THE STATE OF ALABAMA  
JUDICIAL DEPARTMENT  
IN THE SUPREME COURT OF ALABAMA  
OCTOBER TERM 1977-78

NOVEMBER 10, 1978

SC 2536

EX PARTE: WILLIAM HERBERT ORR

PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CIVIL APPEALS (RE: WILLIAM  
HERBERT ORR V. LILLIAN M. ORR)

WHEREAS, on May 24, 1977, a Writ of Certiorari to the Court of Civil Appeals was granted by this Court, and the cause was set down for submission pursuant to Rule 39, Alabama Rules of Appellate Procedure.

WHEREUPON, come the parties and the Petition for Writ of Certiorari to the Court of Civil Appeals being duly submitted and examined and understood by the Court, it is considered by the Court that the writ heretofore issued should be quashed, and that the petition should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Writ of Certiorari heretofore issued to the Court of Civil Appeals be, and the same is hereby, quashed, and the petition be, and the same is hereby, denied, at the costs of the petitioner, for which costs let execution issue.

OPINION PER CURIAM

MADDOX, FAULKNER, SHORES, EMBRY &  
BEATTY, JJ., CONCUR

ALMON, J., CONCURS SPECIALLY WITH WHOM  
BLOODWORTH, J., JOINS  
JONES, J., DISSENTS  
TORBERT, C.J., RECUSES HIMSELF

I, J.O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 30 day of Jan 1978

/s/ J.O. Sentell

Clerk, Supreme Court of Alabama

THE COURT OF CIVIL APPEALS  
WEDNESDAY, MARCH 16, 1977

PRESENT: ALL JUDGES

Civ. 1006

William Herbert Orr

v.

Lillian M. Orr

\*

\*

\*

\*

LEE CIRCUIT COURT

This cause having been submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the Circuit Court be and the same is hereby affirmed.

IT IS FURTHER ORDERED that the appellant, William Herbert Orr and sureties for the costs of appeal, pay the costs of appeal in the Court below.

Opinion by Holmes, J.

Wright, P.J. and Bradley, J., concur

I, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 30 day of Jan, 1978.

/s/ John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

IN THE CIRCUIT COURT OF LEE COUNTY,  
ALABAMA

|                      |   |              |
|----------------------|---|--------------|
| LILLIAN M. ORR,      | ) |              |
| <i>Complainant,</i>  | ) |              |
| <i>v.</i>            | ) | CIVIL ACTION |
| WILLIAM HERBERT ORR, | ) | NO. 186      |
| <i>Respondent.</i>   | ) |              |

JUDGMENT

On July 28, 1976, the complainant, Lillian M. Orr, filed her petition for Rule to Show Cause and Judgment in this Court. By Order of this Court dated July 28, 1976, the said Petition was set for hearing on August 19, 1976 in this Court, and the respondent, William Herbert Orr, was ordered to appear in this Court on August 19, 1976, at 9:00 a.m. to show cause why he should not be adjudged in contempt of this Court for refusing to abide by its decree.

The Order granting a hearing on the Petition described above and the Petition were served on the Respondent, William Herbert Orr, by registered mail on August 2, 1976, and the return receipt showing service was filed in the office of the Clerk of the Circuit Court of Lee County, Alabama, on August 4, 1976.

On Thursday, August 19, 1976, at 9:00 a.m. Honorable John L. Capell, an attorney representing the respondent, appeared specially on behalf of the respondent in this Court, and filed a motion challenging the constitutionality of certain Alabama divorce laws and asking that the Divorce Decree in this case be declared null and void. No general appearance was made by the respondent or his attorney. The said motion was overruled and denied on this date. When the Court overruled and denied the said motion the said attorney representing the respondent left the Courtroom.

The complainant, Lillian M. Orr, appeared with her attorney, the Honorable W. F. Horsley, in this Court on Thursday, August 19, 1976, at 9:00 a.m. at which time the complainant's petition was called for hearing. No one appeared generally for the respondent, William Herbert Orr. The witnesses were duly sworn and testimony was taken ore tenus before the Court. The Court has carefully considered the testimony in this case, and makes the findings of fact described below.

The Court finds from the evidence that the parties to this case for divorce by decree of this Court dated February 26, 1974, which said decree incorporated therein a stipulation of the parties entered into between the parties on February 26, 1974, which is on file in this case. This stipulation provides that the respondent make alimony payments to the complainant in monthly

amounts of \$1,656.00, said payments to be made in the amount of \$828.00 per payment on the 5th and 20th of each month.

The last payment made by the respondent to the complainant was in the amount of \$828.00, and was made on June 5, 1976. Respondent has not made payments to the complainant as provided by the Decree of Divorce on June 20, 1976, July 5, 1976, July 20, 1976, and August 5, 1976. The respondent is in arrears in his alimony payments in the total amount, as of this date, of \$3,312.00.

The Decree of Divorce in this case further provides that respondent pay the premiums on the policy of insurance covering complainant's automobile. A premium in the amount of \$212.00 has been due and payable since May 15, 1976, but has not been paid, as of this date, by the respondent.

The Court further finds from the evidence that the complainant has been required to employ attorneys in the State of Alabama and in the State of California (where respondent now resides) to enforce the Divorce Decree of this Court, and the Court finds that a reasonable attorney fee for said attorneys is in the amount of \$2,000.00. The Court notes and finds that extensive work has been required of the attorneys for the complainant to enforce the Order of this Court.

IT IS ORDERED, ADJUDGED, AND DECREED by the Court as follows:

1. That the complainant, Lillian M. Orr, have and recover of the respondent, William Herbert Orr, the total sum of \$5,524.00 (which sum is made up of \$3,312.00 in alimony, \$212.00 due for payment of the premium on an insurance policy, and \$2000.00 in attorney fees).

2. Costs of Court are taxed against the respondent.

3. Execution may issue for the recovery of the judgment and costs of Court.

4. That the Clerk of this Court mail a copy of this Order, postage prepaid, to the following:

Honorable W. F. Horsley  
Samford, Denson, Horsley & Pettey  
Post Office Box 2345  
Opelika, AL 36801

Honorable John L. Capell  
Capell, Howard, Knabe & Cobbs, P.A.  
Post Office Box 2069  
Montgomery, AL 36103

Mr. William Herbert Orr  
Orrox Corporation  
3303 Scott Blvd.  
Santa Clara, CA 95050

DONE this the 19th day of August, 1976.

/s/ G. H. Wright Jr.  
Circuit Judge

FILED IN OFFICE THIS  
Aug 19, 1976  
HAL SMITH, Register  
Circuit Court, In  
Equity Lee County,  
Alabama]

## APPENDIX C

[Filed Jan 30, 1978]

IN THE COURT OF CIVIL APPEALS  
OF ALABAMA

|                      |   |           |
|----------------------|---|-----------|
| WILLIAM HERBERT ORR, | X |           |
| <i>Appellant</i>     | X |           |
| -vs-                 | X | NO. _____ |
| LILLIAN M. ORR       | X |           |
| <i>Appellee</i>      | X |           |

NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that William Herbert Orr, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Alabama, quashing the petition for Writ of Certiorari to the Court of Civil Appeals of Alabama, entered in this action on November 10, 1977.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/ John L. Capell, III  
John L. Capell, III

## CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of January, 1978, I have served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Mr. W. F. Horsley, of Samford, Denson, Horsley & Pettey, P. O. Box 2345, Opelika, Alabama 36601, by mailing such copy by United States mail, postage prepaid and properly addressed.

I further certify that Mr. William F. Horsley is attorney for the Appellee in this matter and that by service upon him, all parties required to be served have been served.

/s/ John L. Capell, III  
John L. Capell, III

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## APPENDIX D

LILLIAN M. ORR, ) IN THE CIRCUIT COURT OF  
                           *Complainant,* ) LEE COUNTY, ALABAMA  
 VS. ) CIVIL ACTION  
 WILLIAM HERBERT ORR, ) NO. 186  
                           *Respondent.* )

## ORDER DENYING MOTION

On August 19, 1976, the respondent, William Herbert Orr, appeared specially, and filed in this Court his motion seeking a decree by this Court that *Code of Alabama*, Title 34, Sections 31-33 are unconstitutional, and further seeking an injunction against the continued enforcement of the statutes, and a judgment declaring the Divorce Decree in this case granting alimony to complainant be rendered null and void.

The Court has carefully considered said motion, and the memorandum submitted in support of the said motion, and the Court is of the opinion that this motion should be overruled and denied. It is, therefore,

ORDERED, ADJUDGED, AND DECREED by the Court that the respondent's motion, referred to above, be and the same is hereby overruled and denied.

DONE this the 19th day of August, 1976.

/s/ G. H. Wright, Jr.  
 Circuit Judge

NOTE TO CLERK: The Clerk is instructed to send a copy of this Order to Capell, Howard, Knabe & Cobbs, P.A., Attorneys for Respondent, at Post Office Box

2069, Montgomery, Alabama, 36103; and W. F. Horsley, Attorney for Complainant, at Post Office Box 2345, Opelika, Alabama, 36801.

/s/ G. H. Wright, Jr.  
 Circuit Judge

[FILED IN OFFICE THIS  
 Aug 19 1976  
 HAL SMITH, Register  
 Circuit Court, In Equity  
 Lee County, Alabama]

IN THE CIRCUIT COURT OF  
 LEE COUNTY, ALABAMA.

IN RE THE MARRIAGE OF \*  
 LILLIAN M. ORR and \* CASE NO. 186  
 WILLIAM HERBERT ORR. \*

## MOTION

Comes now specially appearing, William Herbert Orr, the Respondent in the above styled cause, and respectfully represents unto this Honorable Court as follows:

1. That this Court on, to-wit, February 26, 1974, rendered a decree of divorce forever dissolving the bonds of matrimony between the parties hereto.

2. That said decree of divorce was an illegal decree being rendered in reliance on *Code of Alabama*, Title 34, §§31-33, which grant an allowance to the wife on decree of divorce.

3. That *Code of Alabama*, Title 34, §§31-33 are unconstitutional because only a divorced husband is

obligated to pay alimony under the statutes, thereby arbitrarily discriminating against male spouses, and thus depriving the husband of due process and equal protection of the law.

WHEREFORE, your Respondent moves the Court for an order decreeing that:

1. *Code of Alabama*, Title 34, §§31-33 arbitrarily discriminate against male spouses and thus are in violation of the equal protection clause of the United States Constitution and thereby are unconstitutional.

2. A permanent injunction be issued against the continued enforcement of these statutes.

3. The decree ordering your Respondent to pay the Complainant alimony be rendered null and void.

/s/ John L. Capell

John L. Capell, Attorney for Respondent

OF COUNSEL:

Capell, Howard, Knabe & Cobbs, P.A.

Post Office Box 2069

Montgomery, Alabama 36103

(205) 262-1671

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IN THE COURT OF CIVIL APPEALS  
STATE OF ALABAMA

WILLIAM HERBERT ORR, )

*Appellant,* )

VS. ) CIVIL COURT NO. 186

LILLIAN M. ORR, )

*Appellee.* )

*BRIEF OF APPELLEE*

*Statement of Issues Presented for Review*

The appellee agrees that the issue before this Court is whether the Alabama alimony laws are unconstitutional because of the gender based classification made in the statutes. The appellant, in his statement of issues presented for review, alleges that the equal protection clause of the Constitution and the due process clause of the Constitution are violated by the statutes, but he only argues the equal protection clause.

*Statement of the Case*

The appellee agrees with appellant's statement of the case.

*Statement of the Facts*

The appellee agrees with appellant's statement of the facts.

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